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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/207,634	12/09/1998	JOSEPH J. BERKE	1374-098	7083

7590 08/31/2004

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EXAMINER

AVERY, BRIDGET D

ART UNIT	PAPER NUMBER
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3618

DATE MAILED: 08/31/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/207,634

Applicant(s)

BERKE ET AL.

Examiner

Bridget Avery

Art Unit

3618

NLU

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 23 January 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 5-14 and 20-28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 5-10, 12, 14 and 20-28 is/are rejected.
- 7) ☐ Claim(s) 11 and 13 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### DETAILED ACTION

1. In response to the decision made by the Board of Appeals, mailed on May 12, 2004, a new ground of rejection on the merits of claims 5-14 and 20-28 follows.

#### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 5-8, 10, 20, 24, 25, 27 and 28 are rejected under 35 U.S.C. 102(b) as being anticipated by Taylor (US Patent 4,160,557).

Taylor teaches the combination of a 2-wheel cart, a carrier mounted on an upper portion of the cart capable of transporting a closed bag or sack containing quantities of loose and granular products, such as sand and trash, the carrier having a pair of elongated jaws, and a means (it is inherent that the clamps are spring loaded) for clamping the jaws to and releasing the jaws from an upper portion of the closed bag or sack, and a handle attached to each of the jaws, as clearly shown in Figure 1. The cart has a selectively foldable lower shelf, as shown in Figure 2, for supporting the bag or sack. The carrier (66) is detachable from the 2-wheel cart. At least one of the jaws has a gripping surface (applicant's attention is directed to the surface engaging the upper bag support 50) for retaining and supporting the upper portion of the closed bag or sack.

3. Claims 5-7, 10, 20, 24, 25, 27 and 28 are rejected under 35 U.S.C. 102(b) as being anticipated by Harmon et al. (US Patent 524,041).

Harmon et al. teaches the combination of a 2-wheel cart (1), a carrier (made of yokes/jaws 10, 13) mounted on an upper portion of the cart (1) capable of transporting a closed bag or sack (not shown, however clearly taught on lines 10, 13, 38, 40, 50, 54) containing quantities of loose and granular products, such as sand and trash, the carrier having a pair of elongated yokes/jaws (10, 13), and a means (one yoke/jaw pivoting to overlie the second yoke/jaw to hold the bag) for clamping the yokes/jaws (10, 13) to and releasing the yokes/jaws (10, 13) from an upper portion of the closed bag or sack, and a handle (14) attached to one of the yokes/jaws (10, 13), as clearly shown in Figures 1 and 2. The cart (1) has a lower shelf/bar (5), as shown in Figure 2, capable of supporting the bag or sack. The carrier (1) is detachable from the 2-wheel cart by removing fasteners in hinges (8) from the cross bar (6). At least one of the yokes/jaws (10, 13) has a gripping surface (applicant's attention is directed to the outer surface of yoke/jaw (10) and the inner surface of yoke/jaw (13)) for retaining and supporting the upper portion of the closed bag or sack.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 9, 12 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Taylor ('557) in view of Hull (US Patent 3,400,942).

Taylor teaches the features described above.

Taylor lacks the teaching of an outwardly adjustable shelf and a cart with a height that is adjustable.

Hull teaches a cart having an outwardly adjustable shelf and a cart with telescoping tubes to adjust the height of the cart.

Based on the teachings of Hull, it would have been obvious to one having ordinary skill in the art, at the time the invention was made, to modify the cart of Taylor to include a telescoping outwardly adjustable shelf to permit the transport of larger loads. It would have been obvious to provide the cart with telescoping tubes to adjust the height of the cart to accommodate users of various heights.

5. Claims 21-23 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Taylor ('557) in view of Cotey et al. (US Patent 5,009,657).

Taylor teaches the features described above.

Taylor lacks the teaching of a metal strip having a plurality of outward extending triangular tabs.

Cotey et al. teaches a clamping device including a metal strip having a plurality of outward extending triangular tabs.

Based on the teachings of Cotey et al., it would have been obvious to modify the clamp of Taylor to include a metal strip having a plurality of outward extending triangular

tabs to aid in securing the clamp to the bag and resisting slippage as the bag is being transported.

***Allowable Subject Matter***

6. Claims 11, 13 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

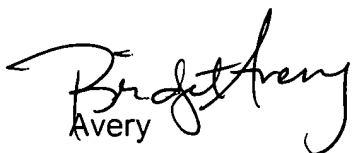
Shadwell shows a clamp.

D'Angelo shows a foldable golf cart.

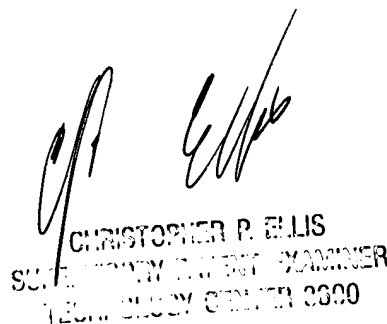
Burskey shows an expansible cart.

Riccardi shows an umbilical clip.

8. Any inquiry concerning this communication should be directed to Bridget Avery at telephone number 703-308-2086.

  
Avery

August 20, 2004

  
CHRISTOPHER P. ELLIS  
SENIOR PATENT EXAMINER  
TECHNICAL CENTER 3600